IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1367 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO LTD - Appellant(s)
Versus
LAXMIBEN AMRUTGIRI GOSWAMI & 4 - Defendant(s)

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Appearance :
MS AMEE YAJNIK for Appellant(s) : 1,
MR VG DESAI for Respondents (s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/07/2007

ORAL JUDGMENT

1. Heard Ms.Amee Yajnik, learned counsel for the appellant and Mr.V.G. Dave, learned counsel for the respondents.

2. The Insurance Company, being aggrieved by the impugned award dtd.30/3/1988 passed by the Motor Accident Claim Tribunal (Main), Rajkot in Motor Accident Claim Petition No.477 of 1984, is before this Court with a submission that the learned tribunal was unjustified in holding that the Insurance Company was jointly and severally liable to pay compensation amount to the claimants.
3. The Insurance Company is not challenging the liability of the owners, but is confining its arguments to its liability only.
4. After taking me through the award it is contended that in view of the findings recorded by the learned tribunal, the Insurance Company could not be held liable from 12.00 midnight of the opening day.
5. Mr.Dave, learned counsel for the respondents – claimants, however, submitted that as the Insurance Policy is for a particular period which is starts from a particular date, the tribunal was justified in holding that the Insurance Company was liable.
6. While discussing the liability of the Insurance Company, the learned tribunal in para 23 of the judgement has considered the case of the parties. In para Nos.20, 21 and

22 of the judgement, the tribunal has observed that the evidence of the witness supports the documents which were originally produced on the records and statements show that the insurance was taken on the same day of accident at about 3.30 p.m. and not prior to that. In para 23 of the judgement, the tribunal has observed that "Admittedly the occurrence had happened at 10.00 on the same day and at that time, there was no insurance in force, according to the Insurance Company."

7. In the opinion of this Court, these findings are based on proper appreciation of evidence of Mansukhlal Mehta (Exh.47), Development Officer of the Insurance Company. Once it is established that a particular vehicle was insured at the time of the accident, then, obtaining a policy on the same day subsequent to the accident would not cover the risk, because, at the time when the Insurance Policy was taken, it was the duty of the owner of the vehicle to inform the Insurance Company that his vehicle had already met with an accident and to avoid that liability, the owner was trying to obtain such insurance.

8. In the opinion of this Court, the tribunal was unjustified in holding that the Insurance Company would also be jointly

and severally liable. In the opinion of this Court, the Insurance Company would at all not be liable to pay anything to the claimants.

9. The appeal is allowed with further directions that if in execution the claimants have recovered the money from the Insurance Company, then, they would be answerable to the Insurance Company and would be liable to refund the amount to the Insurance Company with interest at the rate at which they were awarded the compensation. The claimants would further be entitled to execute the award against the owner and driver of the offending vehicle. The appeal is allowed. No costs.

(R.S. GARG, J.)

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